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7 Attorneys for Defendant
Burbank Police Department Officer Gunn
8

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11

12 PRESTON SMITH, an individual;

13 Plaintiff,

14 vs.
15

16 CITY OF BURBANK; BURBANK
17 POLICE DEPARTMENT;
BURBANK POLICE DEPARTMENT
18 OFFICER GUNN; BURBANK
POLICE DEPARTMENT OFFICER
19 BAUMGARTEN; BURBANK
POLICE DEPARTMENT OFFICER
20 EDWARDS; AND DOES 1
THROUGH 100, INCLUSIVE
21

22 Defendants.
23

Case No. CV 10-8840 VBF (AGRx)

Honorable Valerie Baker Fairbank

**DECLARATION OF NATHAN A.
OYSTER AND EXHIBITS
THERE TO IN SUPPORT OF
OFFICER GUNN'S MOTION FOR
JUDGMENT ON THE PLEADINGS**

Date: May 16, 2011
Time: 1:30 p.m.
Courtroom: 9

24 TO THE CLERK OF THE COURT, ALL INTERESTED PARTIES AND
25 THEIR ATTORNEYS OF RECORD:

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1 Defendant OFFICER GUNN (hereinafter "Officer Gunn") hereby submits
2 the following Declaration of Nathan A. Oyster and Exhibits Thereto in support of
3 Officer Gunn's Motion for Judgment on the Pleadings.
4

5 Dated: April 18, 2011

LAWRENCE BEACH ALLEN & CHOI, PC

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8 By /s/ Nathan A. Oyster
Nathan A. Oyster
9 Attorneys for Defendant
Burbank Police Department Officer Gunn
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DECLARATION OF NATHAN A. OYSTER

I, Nathan A. Oyster, declare as follows:

1. The facts set forth herein are based on my personal knowledge or, as specified, upon my information and belief, based on official acts and writings. If called upon as a witness, I could and would testify competently to the facts contained herein under oath.

2. I am an attorney at law, duly licensed to practice before this Court and all of the courts of the State of California, and an associate of the law firm of Lawrence Beach Allen & Choi, PC, attorneys of record for Defendant OFFICER GUNN (hereinafter "Officer Gunn") in the above-captioned matter.

3. This Motion is made after an unsuccessful effort to resolve the issue informally with Plaintiff's counsel, as required by Local Rule 7-3, which occurred on February 2, 2011.

4. Attached hereto as Exhibit "E" is a true and correct copy of the parties' stipulation indicating that Plaintiff's conviction for violating California Penal Code § 148(a)(1) has not been expunged, withdrawn, or overturned.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct.

Executed on April 18, 2011, at Glendale, California.

/s/ Nathan A. Oyster
Nathan A. Oyster

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9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA

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12 PRESTON SMITH, an individual;

13 Plaintiff,

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15 vs.

16 CITY OF BURBANK; BURBANK
17 POLICE DEPARTMENT;
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18 OFFICER GUNN; BURBANK
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19 BAUMGARTEN; BURBANK
POLICE DEPARTMENT OFFICER
20 EDWARDS; AND DOES 1
THROUGH 100, INCLUSIVE

21
22 Defendants.
23

Case No. CV 10-8840 VBF (AGRx)

Honorable Valerie Baker Fairbank

STIPULATION REGARDING
PLAINTIFF'S CONVICTION FOR
VIOLATING CALIFORNIA
PENAL CODE § 148(a)(1)

Trial Date: November 8, 2011
Time: 8:30 a.m.
Courtroom: 9

24 TO THE CLERK OF THE COURT, ALL INTERESTED PARTIES AND
25 THEIR ATTORNEYS OF RECORD:

26 Plaintiff PRESTON SMITH (hereinafter "Plaintiff") and Defendants CITY
27 OF BURBANK, BURBANK POLICE DEPARTMENT, OFFICER
28 BAUMGARTEN, OFFICER EDWARDS, and OFFICER GUNN (hereinafter

1 "Defendants"), through their respective attorneys of record, hereby enter into the
2 following stipulation:

3 1. On April 29, 2009, Plaintiff PRESTON SMITH pled guilty to
4 violating California Penal Code § 148(a)(1); and

5 2. The conviction referenced in paragraph 1 of this Stipulation has not
6 been expunged, withdrawn, or overturned.

7 This stipulation shall be binding for all purposes in this litigation, including
8 but not limited to, all motions and trial.

9
10 Dated: January 25, 2011

LAW OFFICES OF MANUEL H. MILLER
A Professional Corporation

11
12
13 By  _____

14 Max A. Sauler
15 Attorney for Plaintiff
16 Preston Smith

17 Dated: January 25, 2011

LAWRENCE BEACH ALLEN & CHOI, PC

18
19 By  _____

20 Nathan A. Oyster
21 Attorneys for Defendant
22 Burbank Police Department Officer Gunn

23 Dated: January ___, 2011

DENNIS A. BARLOW
City Attorney

24
25 By _____

26 Carol A. Humiston
27 Sr. Assistant City Attorney
28 City of Burbank, Burbank Police
Department, Burbank Police Officers
Adam Baumgarten and Michael Edwards

1 "Defendants"), through their respective attorneys of record, hereby enter into the
2 following stipulation: "

3 1. On April 29, 2009, Plaintiff PRESTON SMITH pled guilty to
4 violating California Penal Code § 148(a)(1); and

5 2. The conviction referenced in paragraph 1 of this Stipulation has not
6 been expunged, withdrawn, or overturned.

7 This stipulation shall be binding for all purposes in this litigation, including
8 but not limited to, all motions and trial.

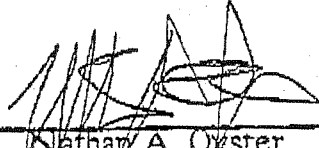
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10 Dated: January __, 2011

LAW OFFICES OF MANUEL H. MILLER
A Professional Corporation

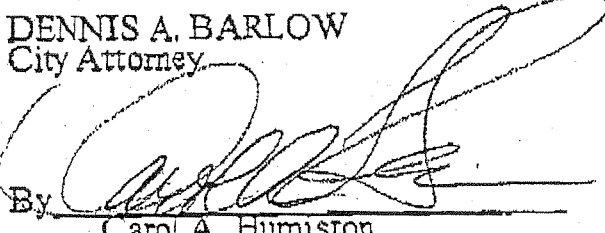
11
12
13 By _____
14 Max A. Sauler
15 Attorney for Plaintiff
16 Preston Smith

17 Dated: January 25, 2011

LAWRENCE BEACH ALLEN & CHOI, PC

18
19 By  _____
20 Nathan A. Oyster
21 Attorneys for Defendant
22 Burbank Police Department Officer Gunn

23 Dated: January 25, 2011

24 DENNIS A. BARLOW
25 City Attorney
26 By  _____
27 Carol A. Humiston
28 Sr. Assistant City Attorney
City of Burbank, Burbank Police
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